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Environmental Protection

State Water Resources Control Board

Office of Enforcement

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Arnold Schwarzenegger
Governor

FAX NUMBER

916-341-5896 // CALNET 8-471-5896

DATE: 11/30/09	CONFIDENTIAL <input type="checkbox"/> YES <input type="checkbox"/> NO	# OF PAGES: (including this page)
TO: WENDY WYERS		TELEPHONE # OF RECIPIENT: (do not use CALNET #) (916) 464-4835
		FAX # (916) 464-4645

FROM: ANN CARROLL
Office of Enforcement, State Water Resources Control Board
PHONE: 916-1322-3227 CALNET 8-471-

COMMENTS: Here's my signature. Please fax to Manuel.
Thanks!

IF PROBLEMS RECEIVING, PLEASE CONTACT:

☐ Debbie Matulis 916-341-5272 ☐ Thomas Harris, 916-341-5277

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
CENTRAL VALLEY REGION

SETTLEMENT AGREEMENT
ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R5-2008-0620

IN THE MATTER OF
FRANK ALVIN ROGERS, JR. AND ROGERS TRUCKING
COLUSA COUNTY

The Assistant Executive Officer of the California Regional Water Quality Control Board, Central Valley Region, ("Regional Water Board") and Frank Alvin Rogers, Jr. and Rogers Trucking (collectively, the "Discharger") hereby agree to this Settlement Agreement ("Agreement") of Administrative Civil Liability Complaint No. R5-2008-0620, dated 17 November 2008 (the "Complaint").

1. This Agreement is entered into by the Regional Water Board Executive Officer and Discharger (collectively hereinafter the "Parties") to resolve by consent and without further administrative proceedings certain alleged violations of the California Water Code ("CWC") section 13385.
2. The Assistant Executive Officer agrees that full compliance with this Agreement constitutes settlement of the Complaint. The Complaint alleges that the Discharger violated CWC section 13385 as a result of an unauthorized discharge of aqua ammonia to an irrigation ditch located in Colusa County on 25 April 2007. The Complaint proposes an administrative civil liability in the amount of \$48,000.
3. The Parties believe that settlement of this matter is in the best interest of the people of the State. Therefore, to settle the Complaint, the Discharger hereby agrees to comply with the terms and conditions of this Agreement.
4. The Parties hereby agree that the following payment schedule shall be submitted to the Assistant Executive Officer with delegated authority to issue Administrative Civil Liability Orders to be memorialized in a communication separate from the proposed Administrative Civil Liability Order issued in this matter:

The Discharger agrees to pay \$30,000 to the State Water Resources Control Board Cleanup and Abatement Account in three payments of \$10,000 over a three month period beginning in January 2010. The payments shall be made by check made payable to the *State Water Pollution Cleanup and Abatement Account* and remitted to the Central Valley Regional Board located 11020 Sun Center Drive, Suite 200, Rancho Cordova, California. Each check shall be in the amount of ten thousand (\$10,000) and shall have written upon it "Complaint No. R5-2008-0620". The first payment is due on 30 January 2010. Subsequent payments are due by 28 February 2010 and 30 March 2010.

5. In consideration of the Discharger's compliance with this Agreement, the Executive Officer hereby agrees not to initiate any other administrative or judicial enforcement actions against the Discharger for the violations alleged in the Complaint.

6. In settling this matter, the Discharger does not admit to any of the findings of the Complaint or the proposed Administrative Civil Liability Order, or that they have been or are in violation of the CWC or any other federal, state, or local law or ordinance, provided, however, the Discharger agrees that in the event of any future enforcement actions by the Regional Water Board, this Agreement may be used as evidence of a settlement consistent with CWC Section 13327.

7. Subject to the qualifications set forth in paragraph 11, below, the Assistant Executive Officer has the authority to settle this matter in accordance with CWC Section 13323 and Government Code Section 11415.60. Mr. Frank Alvin Rogers, Jr. further warrants by signing below that he has the legal authority to bind the Discharger to the terms of this Agreement.

8. The Discharger has been informed of the rights provided by CWC Section 13323, subdivision (b), and hereby waives its right to a hearing before the Regional Water Board.

9. The Discharger hereby waives its right to petition the Regional Water Board's adoption of the Order for review by the State Water Resources Control Board, and further waives its rights, if any, to appeal the same to a California Superior Court and/or any California appellate level court.

10. The Discharger covenants not to sue or pursue any administrative or civil claim(s) against any State Agency or the State of California, their officers, Board Members, employees, representatives, agents, or attorneys arising out of or relating to violations alleged in the Complaint. This paragraph excludes civil case number CV 23622 filed in Colusa County.

11. The Discharger understands that this Agreement and the proposed Administrative Civil Liability Order approving this Agreement must be noticed for a 30-day public review period. In the event objections are raised during the public comment period for the proposed Administrative Civil Liability Order, the Regional Water Board, or its delegee, may under certain circumstances, require a public hearing regarding the proposed Administrative Civil Liability Order. In that event, the Parties agree to meet and confer concerning any such objections, and may agree to revise or adjust the Agreement as necessary or advisable under the circumstances. The Assistant Executive Officer will consider public comments received prior to adopting the ACL Order and will retain discretion to approve or reject the settlement.

12. In the event that the proposed Administrative Civil Liability Order does not take effect because it is not approved by the Regional Water Board, or its delegee, or is vacated in whole or in part by the State Water Resources Control Board or a court, the Parties acknowledge that they expect to proceed to a contested evidentiary hearing before the Regional Water Board to determine whether to assess administrative civil liabilities for the underlying alleged violations, unless the Parties agree otherwise. The Parties agree that all oral and written statements and agreements made during the course of settlement discussions will not be admissible as evidence.

in the hearing. The Parties agree to waive any and all objections based on settlement communications in this matter, including, but not limited to:

- a. Objections related to prejudice or bias of any of the Regional Water Board members or their advisors and any other objections that are premised in whole or in part on the fact that the Regional Water Board members or their advisors were exposed to some of the material facts and the Parties' settlement positions as a consequence of reviewing the Stipulation and/or the Order, and therefore may have formed impressions or conclusions prior to any contested evidentiary hearing on the Complaint in this matter; or
 - b. Laches or delay or other equitable defenses based on the time period for administrative or judicial review to the extent this period has been extended by these settlement proceedings.
13. The Discharger understands that payment in accordance with this Agreement is not a substitute for compliance with applicable laws, and that continuing violations of the type alleged in the Complaint may subject them to further enforcement, including additional administrative civil liability.
14. This Agreement is severable; should any provision be found invalid the remainder shall remain in full force and effect.
15. This Agreement may be executed in counterparts and by facsimile signature.
16. This Agreement shall not be construed against the Party preparing it, but shall be construed as if the Parties prepared it jointly. Any uncertainty or ambiguity shall not be interpreted against any one Party.
17. This Agreement shall not be modified by any of the Parties by oral representation made before or after its execution. All modifications to the Agreement must be in writing and signed by all Parties.
18. Each Party to this Agreement shall bear all attorneys' fees and costs arising from the Party's own counsel in connection with the matters set forth herein.

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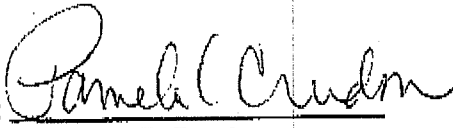
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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers on the dates set forth, and this Agreement is effective as of the most recent date signed.

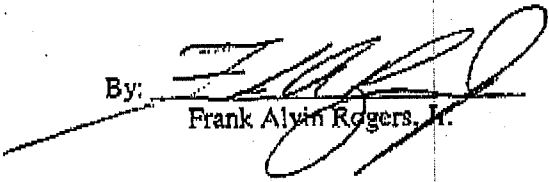
PROSECUTION TEAM

By: 
Pamela C. Creedon
Executive Officer

APPROVED AS TO FORM:


Ann K. B. Carroll
Counsel to the Prosecution Team

**FRANK ALVIN ROGERS, JR. and
ROGERS TRUCKING**

By: 
Frank Alvin Rogers, Jr.

APPROVED AS TO FORM:

Manish Parikh
Counsel for Frank Alvin Rogers, Jr. and Rogers Trucking
Borton Petrini, LLP